

IN THE UNITED STATES DISTRICT COURT  
FOR THE MIDDLE DISTRICT OF ALABAMA  
NORTHERN DIVISION

2006 JUL 21 P 4:31

MARIE TOOLE and CHRIS TOOLE, )

Plaintiffs, )

v. )

MATTHEW CHUPP; DON BRAMLETT )  
and ALFA INSURANCE COMPANY )  
and fictitious defendants A-F. )

Defendants. )

EDWARD D. HACKETT, CLERK  
U.S. DISTRICT COURT  
MIDDLE DISTRICT ALA

2:06 cv 652-

**NOTICE OF REMOVAL**

**COME NOW** Matthew Chupp (Chupp) and Don Bramlett (Bramlett), Defendants in the above-styled lawsuit and pursuant to 28 U.S.C. §1441(a), file this Notice of Removal of this cause from the Circuit Court for Barbour County, Alabama to the United States District Court for the Middle District of Alabama, Northern Division. As grounds for the removal of this cause to this Honorable Court, these Defendants show unto the Court has follows:

1. On or about June 20, 2006, Plaintiffs commenced this action in the Circuit Court for Barbour County, Alabama, Eufaula Division. Plaintiffs aver in their Complaint that they reside in Barbour, County, Alabama. A copy of Plaintiffs' Complaint is attached hereto as Exhibit "A".

2. Defendant Alfa Insurance Company (ALFA) received service of process of Plaintiffs' Summons and Complaint on or about June 22, 2006. ALFA has not filed an Answer nor any other pleading in the Circuit Court of Barbour County,

Alabama. Defendant Bramlett was served June 23, 2006. Bramlett is a resident citizen of the State of Georgia. Defendant Chupp was served June 28, 2006, and is also a resident citizen of the State of Georgia. Neither Bramlett nor Chupp have filed an answer or any other pleading in the Circuit Court of Barbour County, Alabama.

3. Defendant ALFA is an Alabama Corporation. ALFA joins in this removal. (See Exhibit "D") However, ALFA is sued only on a Uninsured/Undersinsured Motorist claim and as such is only a nominal or formal party, with the right to opt out of the litigation. Moreover, ALFA has exercised its right to opt out. (See Exhibit "E"). Defendants Bramlett and Chupp submit the citizenship of Alfa is to be disregarded for purposes of determining diversity given its unique status or alternatively by opting out it is no longer a party.

4. Plaintiffs also name fictitious Defendants in their Complaint. For purposes of removal, "the citizenship of Defendants sued under fictitious names shall be disregarded." *See* 28 U.S.C. §1441(a).

5. Defendants Chupp and Bramlett submit diversity of citizenship exists in this matter. *See* 28 U.S.C. §1332(a)(1).

6. Defendants Chupp and Bramlett submit the amount in controversy, exclusive of interest and costs, is in excess of \$75,000.00. The Plaintiffs' Complaint contains a demand for compensatory damages and punitive damages. Plaintiff Marie Toole alleges injury to her rotator cuff which she further alleges required surgery, may require additional surgery and also claims permanent

disability. Plaintiffs'<sup>1</sup> also assert an Uninsured Motorist/Underinsured Motorist claim alleging there is either no insurance or insufficient insurance. As evidenced by Exhibit "F" Defendants Chupp and Bramlett are defended pursuant to an insurance policy with bodily injury coverage in the amounts of \$100,000/\$300,000. Plaintiff Marie Toole claims obviously exceed the jurisdictional requirement as evidenced by her allegations of injury and that \$100,000 coverage is insufficient.

To the extent Plaintiff Chris Toole joins in the uninsured/underinsured motorist claim it is clear his claim also exceeds the jurisdictional amount necessary to confer jurisdiction on this Court. To the extent he does not this Court has supplemental pendant party jurisdiction over his claim pursuant to 28 U.S.C. § 1367 (a). *See Monroe v. Brown 256 F.Supp.2d 1292 (M.D. Ala. 2003)*

7. Based on the amount in controversy and diversity of citizenship, this Court has original jurisdiction over this cause pursuant to 28 U.S.C. §1332(a)(1) and additionally supplemental jurisdiction over the claim of the husband Chris Toole pursuant to 28 U.S.C. § 1367(a).

8. Pursuant to 28 U.S.C. §1446(b) the Removal of this cause to the court is timely.

9. Pursuant to 28 U.S.C. §1446(d), these Defendants have given written notice of the filing of this Removal to the Plaintiffs. The Defendants have also filed a copy of said Notice with the Clerk of the Circuit Court for Barbour County, Alabama, Eufaula Division. *See Exhibit "B" and "C".*

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<sup>1</sup> It is unclear if this claim is asserted only behalf of Plaintiff Marie Toole or on behalf of both Plaintiffs.

**WHEREFORE**, the above premises having been considered, these Defendants request this Court to make and enter the proper orders to effectuate the removal of this cause from the Circuit Court of Barbour County, Alabama to the United States District Court for the Middle District of Alabama, Northern Division, and that no further or other proceedings shall be had with respect to this cause in the Circuit Court for Barbour County, Alabama.



---

RANDALL MORGAN [8350-R70R]  
Attorney for Defendants Matthew Chupp  
and Don Bramlett  
HILL, HILL, CARTER, FRANCO, COLE & BLACK, P.C.  
Post Office Box 116  
Montgomery, Alabama 36101-0116

**CERTIFICATE OF SERVICE**

I hereby certify that I have served a copy of the foregoing document by placing a copy of same in the United States Mail, first-class postage prepaid, on this the 21<sup>st</sup> day of July, 2006:

Attorney for Plaintiff:

Jim S. Calton, Jr.  
Calton & Calton  
226 East Broad Street  
P O Box 895  
Eufaula, AL 36072

Attorney for ALFA:

Courtney R. Potthoff  
Williams, Potthoff, Williams & Smith  
P O Box 880  
Eufaula, AL 36072-0880



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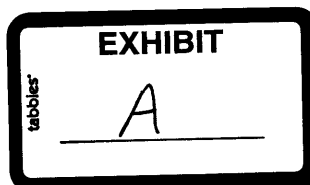
OF COUNSEL

SENDER: COMPLETE THIS SECTION		COMPLETE THIS SECTION ON DELIVERY	
<ul style="list-style-type: none"> <li>■ Complete items 1, 2, and 3. Also complete item 4 if Restricted Delivery is desired.</li> <li>■ Print your name and address on the reverse so that we can return the card to you.</li> <li>■ Attach this card to the back of the mailpiece, or on the front if space permits.</li> </ul>		A. Signature X <i>[Signature]</i> <input type="checkbox"/> Agent <input type="checkbox"/> Addressee	
1. Article Addressed to: Matthew Chapp 10 Cape Charles Avenue Hampton, GA 30228		B. Received by (Printed Name)	C. Date of Delivery <i>6/24/06</i>
		D. Is delivery address different from item 1? <input type="checkbox"/> Yes If YES, enter delivery address below: <input type="checkbox"/> No	
		3. Service Type <input checked="" type="checkbox"/> Certified Mail <input type="checkbox"/> Express Mail <input type="checkbox"/> Registered <input checked="" type="checkbox"/> Return Receipt for Merchandise <input type="checkbox"/> Insured Mail <input type="checkbox"/> C.O.D.	
		4. Restricted Delivery? (Extra Fee) <input type="checkbox"/> Yes	
2. Article Number (Transfer from service label)		7005 1820 0007 7289 7195	
PS Form 3811, February 2004		Domestic Return Receipt <i>CN-06-94</i> 102595-02-M-1540	

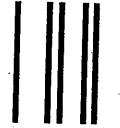
I certify this to be a true  
and correct copy of the  
original which is on file  
and enrolled in my office  
in Clayton or Eufaula,  
Barbour County, Alabama

Witness my hand and seal  
this 18<sup>th</sup> day of July 2006

*[Signature]*  
David S. Nix, Clerk



UNITED STATES POSTAL SERVICE



First-Class Mail  
Postage & Fees Paid  
USPS  
Permit No. G-10

• Sender: Please print your name, address, and ZIP+4 in this box •

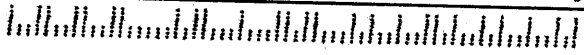
David Nix, Circuit Court Clerk  
Barbour County Courthouse  
Room 201  
303 East Broad St  
Eufaula, AL 36027

**FILED**

JUN 30 2006

DAVID S. NIX, CLERK  
BARBOUR CO. ALABAMA

0006

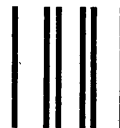


W-0694

SENDER: COMPLETE THIS SECTION		COMPLETE THIS SECTION ON DELIVERY	
<ul style="list-style-type: none"> <li>■ Complete items 1, 2, and 3. Also complete item 4 if Restricted Delivery is desired.</li> <li>■ Print your name and address on the reverse so that we can return the card to you.</li> <li>■ Attach this card to the back of the mailpiece, or on the front if space permits.</li> </ul>		A. Signature X <i>Zachary Chitwood</i> <input type="checkbox"/> Agent <input type="checkbox"/> Addressee	
1. Article Addressed to: <i>Mr. Don Bramlett</i> <i>78 Nail Road</i> <i>McDonough, GA 30253</i>		B. Received by (Printed Name) <i>Zachary Chitwood</i> C. Date of Delivery <i>6/23/06</i> D. Is delivery address different from item 1? <input type="checkbox"/> Yes If YES, enter delivery address below: <input type="checkbox"/> No	
2. Article Number (Transfer from service label)		3. Service Type <input checked="" type="checkbox"/> Certified Mail <input type="checkbox"/> Express Mail <input type="checkbox"/> Registered <input checked="" type="checkbox"/> Return Receipt for Merchandise <input type="checkbox"/> Insured Mail <input type="checkbox"/> C.O.D. 4. Restricted Delivery? (Extra Fee) <input type="checkbox"/> Yes	
PS Form 3811, February 2004		Domestic Return Receipt 102595-02-M-1540	

SENDER: COMPLETE THIS SECTION		COMPLETE THIS SECTION ON DELIVERY	
<ul style="list-style-type: none"> <li>■ Complete items 1, 2, and 3. Also complete item 4 if Restricted Delivery is desired.</li> <li>■ Print your name and address on the reverse so that we can return the card to you.</li> <li>■ Attach this card to the back of the mailpiece, or on the front if space permits.</li> </ul>		A. Signature X <i>Ashley Cochran</i> <input type="checkbox"/> Agent <input type="checkbox"/> Addressee	
1. Article Addressed to: <i>Aifa Corporation</i> <i>P.O. Box 11000</i> <i>Montgomery, AL 36191-0001</i>		B. Received by (Printed Name) <i>Ashley Cochran</i> C. Date of Delivery <i>6/22/06</i> D. Is delivery address different from item 1? <input type="checkbox"/> Yes If YES, enter delivery address below: <input type="checkbox"/> No	
2. Article Number (Transfer from service label)		3. Service Type <input checked="" type="checkbox"/> Certified Mail <input type="checkbox"/> Express Mail <input type="checkbox"/> Registered <input checked="" type="checkbox"/> Return Receipt for Merchandise <input type="checkbox"/> Insured Mail <input type="checkbox"/> C.O.D. 4. Restricted Delivery? (Extra Fee) <input type="checkbox"/> Yes	
PS Form 3811, February 2004		Domestic Return Receipt W-06-94 102595-02-M-1540	

UNITED STATES POSTAL SERVICE



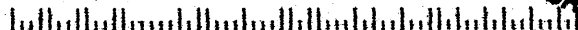
First-Class Mail  
Postage & Fees Paid  
USPS  
Permit No. G-10

• Sender: Please print your name, address, and ZIP+4 in this box •

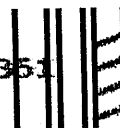
David Nix, Circuit Court Clerk  
Barbour County Courthouse  
Room 201  
303 East Broad Street  
Eufaula, AL 36027

**FILED**  
JUN 26 2006  
DAVID S. NIX, CLERK  
BARBOUR CO. ALABAMA

1C006



UNITED STATES POSTAL SERVICE  
MONTGOMERY AL 361



First-Class Mail  
Postage & Fees Paid  
USPS  
Permit No. G-10

22 JUN 2006 PM 2 T

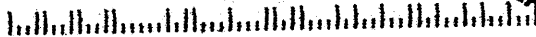
• Sender: Please print your name, address, and ZIP+4 in this box •

David Nix, Circuit Court Clerk  
Barbour County Courthouse  
Room 201  
303 East Broad Street  
Eufaula, AL 36027

**FILED**  
JUN 23 2006  
DAVID S. NIX, CLERK  
BARBOUR CO. ALABAMA

1634

C006





VSO300

ALABAMA JUDICIAL DATA CENTER  
BARBOUR COUNTY

## SUMMONS

CV 2006 000094.00  
HON. BURT SMITHART

IN THE CIRCUIT COURT OF BARBOUR COUNTY

MARIE &amp; CHRIS TOOLE VS MATTHEW CHUPP, DON BRAMLETT ET AL

SERVE ON: (D002)

PLAINTIFF'S ATTORNEY

BRAMLETT DON  
78 NAIL ROADCALTON JIMMY SPURLOCKJR  
226 EAST BRAOD STREET

MCDONOUGH, GA 30253-0000

EUFAULA, AL 36027-0000

TO THE ABOVE NAMED DEFENDANT:

THE COMPLAINT WHICH IS ATTACHED TO THIS SUMMONS IS IMPORTANT AND YOU MUST TAKE IMMEDIATE ACTION TO PROTECT YOUR RIGHTS, YOU OR YOUR ATTORNEY ARE REQUIRED TO MAIL OR HAND DELIVER A COPY OF A WRITTEN ANSWER, EITHER ADMITTING OR DENYING EACH ALLEGATION IN THE COMPLAINT TO THE PLAINTIFFS ATTORNEY(S) SHOWN ABOVE OR ATTACHED:

THIS ANSWER MUST BE MAILED OR DELIVERED WITHIN 30 DAYS AFTER THIS SUMMONS AND COMPLAINT WERE DELIVERED TO YOU OR A JUDGEMENT BY DEFAULT MAY BE ENTERED AGAINST YOU FOR THE MONEY OR OTHER THINGS DEMANDED IN THE COMPLAINT. YOU MUST ALSO FILE THE ORIGINAL OF YOUR ANSWER WITH THE COURT BELOW.

( ) TO ANY SHERIFF OR ANY PERSON AUTHORIZED BY EITHER RULES 4.1(B)(2) OR 4.2(B)(2) OR 4.4(B)(2) OF THE ALABAMA RULES OF CIVIL PROCEDURE: YOU ARE HEREBY COMMANDED TO SERVE THIS SUMMONS AND A COPY OF THE COMPLAINT IN THIS ACTION UPON DEFENDANT.

(x) THIS SERVICE BY CERTIFIED MAIL OF THIS SUMMONS IS INITIATED UPON THE WRITTEN REQUEST OF \_\_\_\_\_ PURSUANT TO RULE 4.1(C) OF THE ALABAMA RULES OF CIVIL PROCEDURE.

DATE: 06/21/2006

CLERK: DAVID S. NIX BY: *David S. Nix*  
303 E BROAD ST. ROOM 201  
EUFAULA AL 36027  
(334) 687-1515

## RETURN ON SERVICE:

( ) CERTIFIED MAIL RETURN RECEIPT IN THIS OFFICE ON (DATE) \_\_\_\_\_  
(RETURN RECEIPT HERETO ATTACHED)

( ) I CERTIFY THAT I PERSONALLY DELIVERED A COPY OF THE SUMMONS AND COMPLAINT TO \_\_\_\_\_  
IN \_\_\_\_\_ COUNTY, ALABAMA ON (DATE) \_\_\_\_\_

DATE \_\_\_\_\_ SERVER SIGNATURE \_\_\_\_\_

SERVER ADDRESS \_\_\_\_\_ TYPE OF PROCESS \_\_\_\_\_

PERATOR: DEH  
REPAIRED: 06/21/2006

Witness my hand and seal  
this 18<sup>th</sup> day of July 2006

*David S. Nix*  
David S. Nix, Clerk

VSO300

ALABAMA JUDICIAL DATA CENTER  
BARBOUR COUNTY

## SUMMONS

CV 2006 000094.00  
HON. BURT SMITHART

IN THE CIRCUIT COURT OF BARBOUR COUNTY

MARIE &amp; CHRIS TOOLE VS MATTHEW CHUPP, DON BRAMLETT ET AL

SERVE ON: (D003)

PLAINTIFF'S ATTORNEY

ALFA CORPORATION  
P O BOX 11000CALTON JIMMY SPURLOCKJR  
226 EAST BRAOD STREET

MONTGOMERY, AL 36191-0000

EUFAULA, AL 36027-0000

TO THE ABOVE NAMED DEFENDANT:

THE COMPLAINT WHICH IS ATTACHED TO THIS SUMMONS IS IMPORTANT AND YOU MUST TAKE IMMEDIATE ACTION TO PROTECT YOUR RIGHTS, YOU OR YOUR ATTORNEY ARE REQUIRED TO MAIL OR HAND DELIVER A COPY OF A WRITTEN ANSWER, EITHER ADMITTING OR DENYING EACH ALLEGATION IN THE COMPLAINT TO THE PLAINTIFFS ATTORNEY(S) SHOWN ABOVE OR ATTACHED:

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( ) TO ANY SHERIFF OR ANY PERSON AUTHORIZED BY EITHER RULES 4.1(B)(2) OR 4.2(B)(2) OR 4.4(B)(2) OF THE ALABAMA RULES OF CIVIL PROCEDURE: YOU ARE HEREBY COMMANDED TO SERVE THIS SUMMONS AND A COPY OF THE COMPLAINT IN THIS ACTION UPON DEFENDANT.

(✓) THIS SERVICE BY CERTIFIED MAIL OF THIS SUMMONS IS INITIATED UPON THE WRITTEN REQUEST OF OF THE ALABAMA RULES OF CIVIL PROCEDURE. PURSUANT TO RULE 4.1(C)

DATE: 06/21/2006

CLERK: DAVID S. NIX BY: *David S. Nix*  
303 E BROAD ST, ROOM 201  
EUFAULA AL 36027  
(334) 687-1515

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IN \_\_\_\_\_ COUNTY, ALABAMA ON (DATE) \_\_\_\_\_

DATE \_\_\_\_\_ SERVER SIGNATURE \_\_\_\_\_

SERVER ADDRESS \_\_\_\_\_ TYPE OF PROCESS \_\_\_\_\_

*I certify this to be a true and correct copy of the original which is on file and enrolled in my office in Clayton or Eufaula, Barbour County, Alabama*

PERATOR: DEH  
REPAIRED: 06/21/2006

Witness my hand and seal  
this 18<sup>th</sup> day of July 2006  
*David S. Nix*  
David S. Nix, Clerk

VSO300

ALABAMA JUDICIAL DATA CENTER  
BARBOUR COUNTY

## SUMMONS

CV 2006 000094.00  
HON. BURT SMITHART

IN THE CIRCUIT COURT OF BARBOUR COUNTY

MARIE &amp; CHRIS TOOLE VS MATTHEW CHUPP, DON BRAMLETT ET AL

SERVE ON: (D001)

PLAINTIFF'S ATTORNEY

CHUPP MATTHEW  
10 CAPE CHARLES AVENUECALTON JIMMY SPURLOCKJR  
226 EAST BRAOD STREET

HAMPTON, GA 30228-0000

EUFULA, AL 36027-0000

TO THE ABOVE NAMED DEFENDANT:

THE COMPLAINT WHICH IS ATTACHED TO THIS SUMMONS IS IMPORTANT AND YOU MUST TAKE IMMEDIATE ACTION TO PROTECT YOUR RIGHTS, YOU OR YOUR ATTORNEY ARE REQUIRED TO MAIL OR HAND DELIVER A COPY OF A WRITTEN ANSWER, EITHER ADMITTING OR DENYING EACH ALLEGATION IN THE COMPLAINT TO THE PLAINTIFFS ATTORNEY(S) SHOWN ABOVE OR ATTACHED:

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OF THE ALABAMA RULES OF CIVIL PROCEDURE.

DATE: 06/21/2006

CLERK: DAVID S. NIX BY: *DN*  
303 E BROAD ST, ROOM 201  
EUFULA AL 36027  
(334) 687-1515

## RETURN ON SERVICE:

( ) CERTIFIED MAIL RETURN RECEIPT IN THIS OFFICE ON (DATE) \_\_\_\_\_  
(RETURN RECEIPT HERETO ATTACHED)

( ) I CERTIFY THAT I PERSONALLY DELIVERED A COPY OF THE SUMMONS AND COMPLAINT TO \_\_\_\_\_  
IN \_\_\_\_\_ COUNTY, ALABAMA ON (DATE) \_\_\_\_\_

DATE \_\_\_\_\_ SERVER SIGNATURE \_\_\_\_\_  
SERVER ADDRESS \_\_\_\_\_ TYPE OF PROCESS \_\_\_\_\_

*certify this to be a true  
and correct copy of the  
original which is on file  
and enrolled in my office  
in Clayton or Eufaula,  
Barbour County, Alabama*

PERATOR: DEH  
REPAIRED: 06/21/2006

Witness my hand and seal  
this 18<sup>th</sup> day of July 2006

*David S. Nix*  
David S. Nix, Clerk

State of Alabama  
Unified Judicial System

Form ARCivP-93 Rev. 5/99

COVER SHEET  
CIRCUIT COURT - CIVIL CASE  
(Not For Domestic Relations Cases)

Case No. 3cr

[ ] [ ] [ ] [ ] [ ] [ ] [ ] [ ] [ ] [ ]

Date of Filing:

Judge Code:

[ ] [ ] [ ] [ ] [ ] [ ] [ ] [ ] [ ] [ ]  
Month Day Year

## GENERAL INFORMATION

IN THE COURT OF BARBOUR, ALABAMA

(Name of County)

Marie Toole, Chris Toole

Plaintiff

v. Matthew Chupp, Don Bramlett, et al

Defendant

First Plaintiff

☐

Business

☒

Individual

☐

Government

☐

Other

First Defendant

☐

Business

☒

Individual

☐

Government

☐

Other

NATURE OF SUIT: Select primary cause of action, by checking box (check only one) that best characterizes your action:

## TORTS: PERSONAL INJURY

- ☐ WDEA - Wrongful Death  
☒ TONG - Negligence: General  
☒ TOMV - Negligence: Motor Vehicle  
☒ TOWA - Wantonness  
☐ TOPL - Product Liability/AEMLD  
☐ TOMM - Malpractice-Medical  
☐ TOLM - Malpractice-Legal  
☐ TOOM - Malpractice-Other  
☐ TBFM - Fraud/Bad Faith/Misrepresentation  
☒ TOXX - Other: Loss of Consortium

## TORTS: PROPERTY INJURY

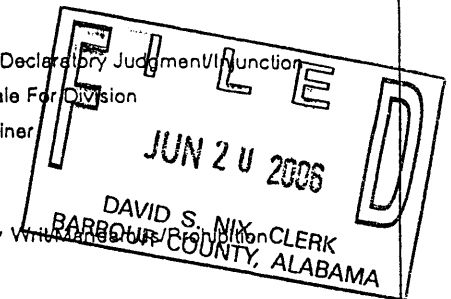
- ☐ TOPE - Personal Property  
☐ TORE - Real Property

## OTHER CIVIL FILINGS

- ☐ ABAN - Abandoned Automobile  
☐ ACCT - Account & Nonmortgage  
☐ APAA - Administrative Agency Appeal  
☐ ADPA - Administrative Procedure Act  
☐ ANPS - Adults in Need of Protective Services

## OTHER CIVIL FILINGS (cont'd)

- ☐ MSXX - Birth/Death Certificate Modification/Bond Forfeiture Appeal/  
Enforcement of Agency Subpoena/Petition to Preserve  
☐ CVRT - Civil Rights  
☐ COND - Condemnation/Eminent Domain/Right-of-Way  
☐ CTMP - Contempt of Court  
☐ CONT - Contract/Ejectment/Writ of Seizure  
☐ TOCN - Conversion  
☐ EQND - Equity Non-Damages Actions/Declaratory Judgment/Injunction  
Election Contest/Quiet Title/Sale For Division  
☐ CVUD - Eviction Appeal/Unlawful Detainer  
☐ FORJ - Foreign Judgment  
☐ FORF - Fruits of Crime Forfeiture  
☐ MSHC - Habeas Corpus/Extraordinary Writs  
☐ PFAB - Protection From Abuse  
☐ FELA - Railroad/Seaman (FELA)  
☐ RPRO - Real Property  
☐ WTEG - Will/Trust/Estate/Guardianship/Conservatorship  
☐ COMP - Workers' Compensation  
☐ CVXX - Miscellaneous Circuit Civil Case



ORIGIN (check one):

F

☒ INITIAL FILING

A

☐ APPEAL FROM  
DISTRICT COURT

O

☐ OTHER:

R

☐ REMANDED

T

☐ TRANSFERRED FROM  
OTHER CIRCUIT COURT

HAS JURY TRIAL BEEN DEMANDED?

☒ YES☐ NO

Note: Checking "Yes" does not constitute a demand for a jury trial. (See Rules 38 and 39, Ala.R.Civ.P., for procedure)

RELIEF REQUESTED:

☒

MONETARY AWARD REQUESTED

☐

NO MONETARY AWARD REQUESTED

ATTORNEY CODE:

C A L 0 5 2

06/19/06

Date

Signature of Attorney/Party filing this in Barbour County, Alabama

Witness my hand and seal  
this 18<sup>th</sup> day of July 2006

David S. Nix, Clerk

MEDIATION REQUESTED:

☒

YES

☐

NO

☐

UNDECIDED

I certify this to be a true and correct copy of the original which is on file and enrolled in my office in Clayton or Eufaula, Barbour County, Alabama

IN THE CIRCUIT COURT OF BARBOUR COUNTY, ALABAMA  
EUFULA DIVISION

Witness my hand and seal  
this 18<sup>th</sup> day of July 2006

*David S. Nix*  
David S. Nix, Clerk

Marie Toole; Chris Toole,

Plaintiffs,

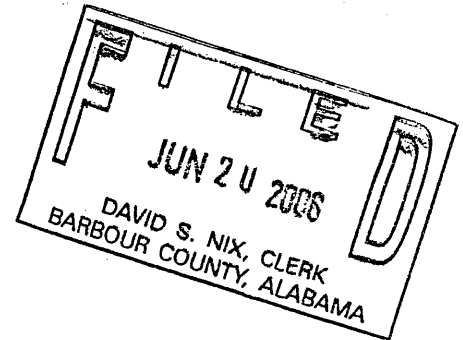
vs.

CIVIL ACTION NO.: CV-06-  
(Trial By Jury Demanded)

94

Matthew Chupp; Don Bramlett; and Alfa Insurance Company; and Fictitious Defendants "A" an Alabama resident, "B," "C," and Fictitious Defendants "D," "E," and "F" whether singular or plural, those other persons, corporations, firms or other entities whose wrongful conduct caused or contributed to cause the injuries and damages to the Plaintiff, all of whose true and correct names are unknown to the Plaintiff at this time, but will be substituted by amendment when ascertained,

Defendants.



COMPLAINT

COME NOW the Plaintiffs in this cause and state as follows:

STATEMENT OF THE PARTIES

1. Plaintiff, Marie Toole, individually, is over the age of nineteen (19) years of age and resides at 211 Pebble Beach Drive, Eufaula, Barbour County, Alabama and was such at the time of the accident complained of.
2. Plaintiff, Chris Toole, individually, is over the age of nineteen (19) years and resides at 211 Pebble Beach Drive, Eufaula, Barbour County, Alabama and is the husband of Marie Toole.
3. Defendant, Matthew Chupp is over the age of nineteen (19) years of age and resides at 10 Cape Charles Avenue, Hampton, Georgia 30228.
4. Defendant Don Bramlett is believed to be over the age of nineteen (19) years and resides at 78 Nail Road, McDonough, Georgia 30253 and is the owner of the automobile driven by the Defendant,



Matthew Chupp at the time and place of the accident described further in this complaint.

5. Defendant Alfa Insurance Company is an Alabama corporation licensed to sell insurance in the State of Alabama. This Defendant conducts business in Eufaula, Barbour County, Alabama. This Defendant is the uninsured/underinsured automobile insurance carrier for the Plaintiffs, which issued a policy of coverage that was in full force and effect at the time of the incident complained.

6. Fictitious Defendants "A" who is believed to be an Alabama citizen, corporation and/or other entity over the age of nineteen (19) and "B", "C", and "D", "E", "F", whether singular or plural, are those other persons, corporations, firms or other entities who own, leased, maintained, inspected and/or repaired the automobile driven by Defendant, Matthew Chupp and owned by Defendant, Don Bramlett, whose wrongful conduct caused or contributed to cause the injuries and damages to the Plaintiffs, all whose true and correct names are unknown to Plaintiffs at this time, but will be substituted by amendment when ascertained in accordance with A.R.C.P. Rule 9 and Rule 15.

7. Plaintiff, Marie Toole was involved in an automobile accident with the individually named Defendant which occurred on July 9<sup>th</sup>, 2004 in Eufaula, Barbour County, Alabama.

#### COUNT ONE

8. Plaintiff, Marie Toole adopts and re-alleges the averments of fact contained in all paragraphs preceding in this complaint by reference as though fully set out herein.

9. On or about the 9<sup>th</sup> day of July, 2004, upon a public highway known as the Bakerhill Highway in the City of Eufaula, Barbour County, Alabama, the Defendant, Matthew Chupp, while driving an automobile owned by the Defendant, Don Bramlett, negligently/wantonly and/or recklessly allowed said automobile to collide with an automobile being driven, occupied and owned by the Plaintiff.

10. As a proximate result of the Defendant's negligent/wanton and/or reckless conduct, the

Plaintiff was made sick, sore, and lame as to injuries in her back, neck, arms and entire body. The Plaintiff suffered a painful injury and permanent disability to her shoulder/rotator cuff which ultimately required surgery and may require additional surgery in the future. The Plaintiff incurred medical bills in and about an effort to heal herself, endured significant pain and suffering, inconvenience, mental anguish and emotional distress and will be caused to experience lifelong pain and suffering into the future.

11. Plaintiff's vehicle was damaged, bent, battered and broken, and rendered less in value.

12. Plaintiff claims compensatory and punitive damages of the Defendants for personal injuries due to the Defendant's negligent, wanton, and/or reckless conduct and claims property damages for the diminished value of her automobile.

WHEREFORE, Plaintiff, demands judgment against the Defendants in such sum as the jury determines reasonable under the circumstances.

#### LOSS OF CONSORTIUM

#### COUNT TWO

13. Plaintiff, Chris Toole, adopts and re-alleges the averment of fact contained in all paragraphs preceding in this complaint by reference as though fully set out herein.

14. As a proximate result of the Defendant's said negligence, wantonness and/or recklessness, the Plaintiff, Chris Toole was caused to temporarily lose the companionship, society, care, support, and consortium, of his beloved wife, Marie Toole and will continue to suffer in the future due to the diminished nature of consortium with his beloved wife all of which was caused by the Defendant's negligent, wanton, and/or reckless conduct.

WHEREFORE, Plaintiff, Chris Toole, demands judgment against the Defendants in an amount of compensatory and punitive damages which the jury deems fair and just to compensate the Plaintiff for his loss.

UNINSURED/UNDERINSURED MOTORIST

COUNT THREE

15. These Plaintiffs, adopt and re-allege the averment of fact contained in all paragraphs preceding in this complaint by reference as though fully set out herein.

16. Prior to the collision heretofore described, Defendant Alfa Insurance Company, for and in consideration of a valuable premium agreed to and paid by Plaintiffs, issued a policy of automobile insurance associated with claim number A153669 which was in full force and effect at the time of the incidents complained. Said policy of insurance insured the Plaintiffs against loss or injury arising out of an automobile collision involving an uninsured and/or underinsured motor vehicle.

17. On July 9, 2004, while said policy of insurance was still in full force and effect, Marie Toole suffered physical injury, as a result of collision when a vehicle driven by Defendant Matthew Chupp, and owned by Defendant Don Bramlett collided with her insured automobile.

18. The Defendants, Matthew Chupp and Don Bramlett are either uninsured or underinsured within the meaning of the Alfa Insurance policy and as defined by Alabama law.

19. Thereafter, and within due time as prescribed in the policy of insurance, Defendant Alfa Insurance Company was notified of how, when and where said collision and loss happened and of the injuries sustained by Marie Toole. In addition, each and every term, condition, and provision of the policy of insurance to be performed as a prerequisite to the recovery of benefits has been fully and completely performed.

WHEREFORE, Plaintiff demands judgment against the Defendant Alfa Insurance Company in an amount of compensatory damages and punitive damages which the jury deems fair and just to compensate the Plaintiff along with cost of court.



NEGLIGENT ENTRUSTMENT

COUNT FOUR

20. These Plaintiffs, adopt and re-allege the averment of fact contained in all paragraphs preceding in this complaint by reference as though fully set out herein.

21. The Defendant, Don Bramlett, either knew or should have known that the Defendant, Matthew Chupp could not and would not and in fact did not operate the automobile which had been entrusted to him, in a safe and reasonable manner. The Defendant, Bramlett, violated Section 32-5A-190(A), Code of Alabama, when he drove his vehicle carelessly and heedlessly and willfully, wantonly or recklessly, disregarding the rights or safety of persons or property, or without due caution and circumspection and at a speed or in a manner so as to endanger or likely to endanger any person or property.

22. As a proximate consequence of the negligent entrustment of a vehicle by Defendant, Don Bramlett to Defendant, Matthew Chupp, Plaintiffs received injuries arising out of said accident.

WHEREFORE Plaintiffs demand judgment against Defendants and in an amount of punitive and compensatory damages which the jury deems fair and just.



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Jim S. Calton, Jr. (CAL052)  
Attorney for Plaintiffs

OF COUNSEL:  
CALTON & CALTON  
226 East Broad Street  
P.O. Box 895  
Eufaula, AL 36072-0895  
(334) 687-3563/3564-fax  
www.attorneycalton.com

**PLAINTIFFS DEMAND TRIAL BY JURY**



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OF COUNSEL

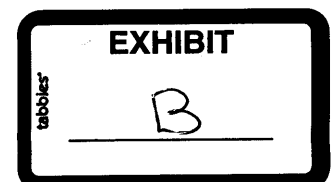
**IN THE UNITED STATES DISTRICT COURT  
FOR THE MIDDLE DISTRICT OF ALABAMA  
NORTHERN DIVISION**

<b>MARIE TOOLE and CHRIS TOOLE,</b>	)	
	)	
<b>Plaintiffs,</b>	)	
	)	
<b>v.</b>	)	
	)	
<b>MATTHEW CHUPP; DON BRAMLETT</b>	)	
<b>and ALFA INSURANCE COMPANY</b>	)	
<b>and fictitious defendants A-F.</b>	)	
	)	
<b>Defendants.</b>	)	

**NOTICE TO PLAINTIFF ATTORNEY OF REMOVAL**

**To:** Jim S. Calton, Jr.  
Calton & Calton  
226 East Broad Street  
P O Box 895  
Eufaula, AL 36072

PLEASE TAKE NOTICE that the Defendants, Matthew Chupp and Don Bramlett, has on this 21<sup>st</sup> day of July, 2006, filed in the United States District Court for the Middle District of Alabama, Northern Division, the Notice of Removal to remove this case, Case No. CV-2006-94, from the Circuit Court of Barbour County, Alabama, Eufaula Division to the United States District Court for the Middle District of Alabama, Northern Division. You are also advised that a true and correct copy of the Notice of Removal has been filed with the Clerk of the Circuit Court of Barbour County, Alabama, Eufaula Division which has effected removal. Copies of the Notice of Removal and the Notice to the Circuit Court Clerk of Barbour County, Alabama, Eufaula Division are attached hereto.



Respectfully submitted this the 21<sup>st</sup> day of July, 2006.



---

RANDALL MORGAN [8350-R70R]  
Attorney for Defendants Matthew Chupp  
and Don Bramlett  
HILL, HILL, CARTER, FRANCO, COLE & BLACK, P.C.  
Post Office Box 116  
Montgomery, Alabama 36101-0116

**CERTIFICATE OF SERVICE**

I hereby certify that I have served a copy of the foregoing document by placing a copy of same in the United States Mail, first-class postage prepaid, on this the 19 day of July, 2006:

**Attorney for Plaintiff:**

Jim S. Calton, Jr.  
Calton & Calton  
226 East Broad Street  
P O Box 895  
Eufaula, AL 36072  
FAX - 334-687-3564  
[www.attorneycalton.com](http://www.attorneycalton.com)



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OF COUNSEL

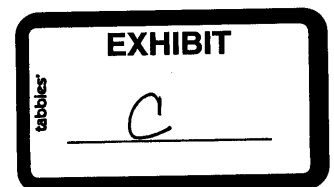
**IN THE UNITED STATES DISTRICT COURT  
FOR THE MIDDLE DISTRICT OF ALABAMA  
NORTHERN DIVISION**

MARIE TOOLE and CHRIS TOOLE,	)	
	)	
Plaintiffs,	)	
	)	
v.	)	
	)	
MATTHEW CHUPP; DON BRAMLETT	)	
and ALFA INSURANCE COMPANY	)	
and fictitious defendants A-F.	)	
	)	
Defendants.	)	

**NOTICE OF FILING NOTICE OF REMOVAL**

TO: Mr. David S. Nix  
Barbour County Court Clerk  
Courthouse  
303 East Broad Street  
Eufaula, AL 36027

NOTICE IS HEREBY GIVEN that, pursuant to provisions of 28 U.S.C. §§ 1441(a) and 1332(a)(1), the Defendants, Matthew Chupp and Don Bramlett Crane have on the 21<sup>st</sup> day of July, 2006, filed in the District Court of the United States for the Middle District of Alabama, Northern Division, a Notice of Removal for Case CV-2006-94, from the Circuit Court of Barbour County, Alabama, Eufaula Division to the District Court of the United States for the Middle District of Alabama, Northern Division. A copy of the Notice of Removal is attached hereto.



Done this 21<sup>st</sup> day of July, 2006.



---

RANDALL MORGAN [8350-R70R]  
Attorney for Defendants Matthew Chupp  
and Don Bramlett  
HILL, HILL, CARTER, FRANCO, COLE & BLACK, P.C.  
Post Office Box 116  
Montgomery, Alabama 36101-0116

**CERTIFICATE OF SERVICE**

I hereby certify that I have served a copy of the foregoing document by placing a copy of same in the United States Mail, first-class postage prepaid, on this the 21 day of July, 2006:

**Attorney for Plaintiff:**

Jim S. Calton, Jr.  
Calton & Calton  
226 East Broad Street  
P O Box 895  
Eufaula, AL 36072  
FAX - 334-687-3564  
**www.attorneycalton.com**

**Attorney for ALFA:**

Courtney R. Potthoff  
Williams, Potthoff, Williams & Smith  
P O Box 880  
Eufaula, AL 36072-0880



---

OF COUNSEL

IN THE UNITED STATES DISTRICT COURT  
FOR THE MIDDLE DISTRICT OF ALABAMA  
NORTHERN DIVISION

MARIE TOOLE and CHRIS TOOLE, )

Plaintiffs, )

vs. )

CIVIL ACTION NO. \_\_\_\_\_

MATTHEW CHUPP; )  
DON BRAMLETT and ALFA )  
INSURANCE COMPANY, et al., )

Defendants. )

**JOINDER IN REMOVAL**

Alfa Mutual Insurance Company, co-defendant in this action, through its counsel of record, Courtney R. Potthoff, hereby joins in the Notice of Removal heretofore filed by the Defendants Matthew Chupp and Don Bramlett.

  
Courtney R. Potthoff ASB 4565-057C

OF COUNSEL:

WILLIAMS, POTTHOFF, WILLIAMS  
& SMITH, L.L.C.

Post Office Box 880  
Eufaula, Alabama 36072-0880  
Telephone (334) 687-5834  
Facsimile (334) 687-5722

EXHIBIT


D

**CERTIFICATE OF SERVICE**

I hereby certify that I have on this 21<sup>st</sup> day of July, 2006, served a copy of the above and foregoing Joinder in Removal upon the following counsel of record, by depositing a copy of same in the United States Mail, properly addressed, postage prepaid:

Jim S. Calton, Jr., Esq.  
CALTON & CALTON  
Post Office Box 895  
Eufaula, Alabama 36072-0895

Randall C. Morgan, Esq.  
HILL, HILL, CARTER, FRNACO, COLE  
& BLACK  
Post Office Box 116  
Montgomery, Alabama 36101-0116

  
\_\_\_\_\_  
Of Counsel



**IN THE UNITED STATES DISTRICT COURT FOR  
THE MIDDLE DISTRICT OF ALABAMA  
NORTHERN DIVISION**

**MARIE TOOLE and  
CHRIS TOOLE,**

**Plaintiffs,**

**vs.**

**MATTHEW CHUPP;  
DON BRAMLETT and ALFA  
INSURANCE COMPANY, et al.,**

**Defendants.**

**CIVIL ACTION NO. \_\_\_\_\_**

**NOTICE OF ELECTION TO OPT OUT OF LITIGATION**

COMES NOW Defendant, Alfa Mutual Insurance Company, (hereinafter referred to as "Alfa Mutual") and hereby exercises its election not to participate in the trial of the above-styled case and as grounds therefore shows unto the Court as follows:

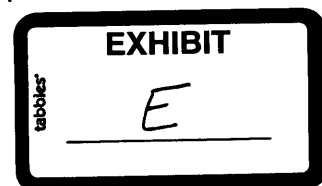
1. Alfa Mutual is the uninsured/underinsured motorist carrier of Plaintiffs Marie Toole and Chris Toole.

2. At the time of this accident, Marie Toole and Chris Toole had in full force and effect a policy or policies of insurance on the car that Plaintiff, Marie Toole, was operating at the time of the underlying accident.

3. Under the circumstances, Plaintiffs' insurance with Alfa Mutual would be in excess of the coverage provided under Mr. Bramblett's policy or policies.

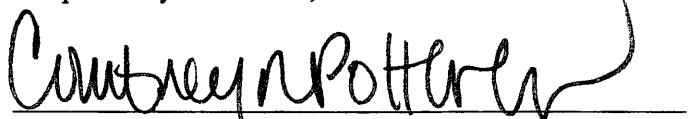
4. Alfa Mutual respectfully notifies the Court of its intention to opt out of this litigation and not participate in the trial of this matter.

5. Alfa Mutual agrees to be bound by the verdict of the jury and agrees to pay any judgment in accordance with its policy of insurance and within the limits of said policy.



WHEREFORE, the premises considered, Alfa Mutual Insurance Company respectfully notifies this Court of its election to opt out of this litigation.

Respectfully submitted,

  
Courtney R. Potthoff ASB 4565-057C

Attorney for Defendant  
Alfa Mutual Insurance Company

OF COUNSEL:

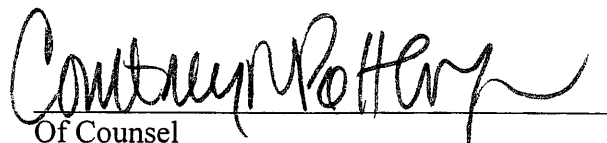
WILLIAMS, POTTHOFF, WILLIAMS  
& SMITH, L.L.C.  
Post Office Box 880  
Eufaula, Alabama 36072-0880  
Telephone (334) 687-5834  
Facsimile (334) 687-5722

**CERTIFICATE OF SERVICE**

I hereby certify that I have on this 21<sup>st</sup> day of July, 2006, served a copy of the above and foregoing upon the following counsel of record, by depositing a copy of same in the United States Mail, properly addressed, postage prepaid:

Jim S. Calton, Jr., Esq.  
CALTON & CALTON  
Post Office Box 895  
Eufaula, Alabama 36027

Randall C. Morgan, Esq.  
HILL, HILL, CARTER, FRANCO, COLE  
& BLACK  
Post Office Box 116  
Montgomery, Alabama 36101-0116

  
Of Counsel



# NATIONWIDE AUTO POLICY DECLARATIONS

Page 1 of 2

These Declarations are a part of the policy named above and identified by policy number below. They supersede any Declarations issued earlier. Your policy provides the coverages and limits shown in the schedule of coverages. They apply to each insured vehicle as indicated. Your policy complies with the motorists' financial responsibility laws of your state only for vehicles for which Property Damage and Bodily Injury Liability coverages are provided.

**Policy Number:**  
77 10 N 975182

**Policyholder:**  
(Named Insured)  
DON & LUCINDA  
BRAMLETT  
78 NAIL RD  
MCDONOUGH, GA  
30253-7228

**Issued:**  
APR 27, 2004

**Policy Period From:**

MAY 28, 2004 to NOV 28, 2004 but only if the required premium for this period has been paid and only for six month renewal periods if renewal premiums have been paid as required. This policy is initially effective at (1) the time the application for insurance is completed, or (2) 12:01 a.m. on the first day of the policy period, whichever is later. Each renewal period begins and ends at 12:01 a.m. standard time at the address of the named insured stated herein. This policy cancels at 12:01 a.m. at the address of the named insured stated herein.

## INSURED VEHICLE(S) & SCHEDULE OF COVERAGES

Coverages	Limits Of Liability	Six Month Premium
1. 1998 FORD F150 XLT	ID #2FTRX08L9WCA18404	
COMPREHENSIVE	ACTUAL CASH VALUE LESS \$ 500	\$ 69.60
COLLISION	ACTUAL CASH VALUE LESS \$ 500	\$ 284.10
PROPERTY DAMAGE LIABILITY	\$50,000 EACH OCCURRENCE	\$ 143.50
BODILY INJURY LIABILITY	\$100,000 EACH PERSON	
MEDICAL PAYMENTS	\$300,000 EACH OCCURRENCE	\$ 190.00
UNINSURED MOTORISTS	\$5,000 EACH PERSON	\$ 37.20
- BODILY INJURY	\$25,000 EACH PERSON	\$ 16.20
- PROPERTY DAMAGE	\$50,000 EACH OCCURRENCE	\$ 2.30
LOSS OF USE	\$25,000 EACH OCCURRENCE LESS \$ 250	\$ 10.00
TOWING AND LABOR	20 PER DAY 650 PER ACCIDENT 50 EACH DISABLEMENT	\$ 1.10
	3022	\$ 754.00
	TOTAL	

Coverages	Limits Of Liability	Six Month Premium
2. 2001 FORD EXPEDIT	ID #1FMRU17L31LB36913	
COMPREHENSIVE	ACTUAL CASH VALUE LESS \$ 500	\$ 57.50
COLLISION	ACTUAL CASH VALUE LESS \$ 500	\$ 147.40
PROPERTY DAMAGE LIABILITY	\$50,000 EACH OCCURRENCE	\$ 61.80
BODILY INJURY LIABILITY	\$100,000 EACH PERSON	
MEDICAL PAYMENTS	\$300,000 EACH OCCURRENCE	\$ 81.90
UNINSURED MOTORISTS	\$5,000 EACH PERSON	\$ 16.10
- BODILY INJURY	\$25,000 EACH PERSON	\$ 16.20
- PROPERTY DAMAGE	\$50,000 EACH OCCURRENCE	\$ 2.30
LOSS OF USE	\$25,000 EACH OCCURRENCE LESS \$ 250	\$ 10.00
TOWING AND LABOR	20 PER DAY 650 PER ACCIDENT 50 EACH DISABLEMENT	\$ 1.10
	3022	\$ 394.30
	TOTAL	

LIENHOLDER-SUNTRUST BANK

LIEN EXPIRES ON OCT 15, 2008

V-0100-A

FRAME: K 21

based upon information and belief,  
this is a true and correct copy of the  
policy for Policy # 7710N 975182  
is of 7/9/04

*Revised*

EXHIBIT

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V-0100-A

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Page 2 of 2

**VEHICLE CLASSIFICATIONS****Premium Is Based On:**

	1998 FORD	2001 FORD
USE OF VEHICLE	PLEASURE	WEEKLY COMMUTE 30 MILES
RATED DRIVER	MALE AGE 16 OCCASIONAL UNMARRIED	MALE ADULT PRINCIPAL MARRIED
APPLIED DISCOUNTS	PASSIVE RESTRAINT -AIR BAG FULL GOOD STUDENT MULTI CAR LONG TERM	PASSIVE RESTRAINT -AIR BAG FULL ANNUAL MILEAGE MULTI CAR LONG TERM
SPECIAL RATING	SAFE DRIVER	SAFE DRIVER
RATING SYMBOLS	026-018 00	029-019 00

**Policy Form & Endorsements:** V010**Office Use:** APR 16, 2004 TERR: 048 \$ 0.00**Issued By:** NATIONWIDE MUTUAL FIRE INSURANCE COMPANY  
**Countersigned At:** GAINESVILLE, FL.**By:** ERROL**Home Office - Columbus, Ohio**  
BURDESHAW**IMPORTANT PHONE NUMBERS****Nationwide 24-Hour Claims Number:** 1-800-421-3535**For QUESTIONS About Your Policy, Call Your NATIONWIDE AGENT :** E. BURDESHAW INS AGCY INC  
770-507-0087**For Hearing Impaired:** TTY 1-800-822-2421**Nationwide Regional Office:** 352-377-8500

FRAME: L 21



These Declarations are a part of the policy.

**MOTORCYCLE POLICY  
DECLARATIONS**

Page 1 of 2